

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ERNEST RICHARD LEYBA,

Plaintiff,

v.

No. CIV 10-0731 WJ/RLP

PHARM CORR MEDICAL CARE SERVICES,
BERNALILLO COUNTY METROPOLITAN
DETENTION CENTER,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL


This matter is before the Court for consideration of Plaintiff's response to the order to show cause entered on October 19, 2010. The order directed Plaintiff to show why his complaint should not be dismissed for failure to exhaust available administrative remedies. *See* 42 U.S.C. § 1997e(a). In his response, Plaintiff provides more details about his injury and medical treatment, but he does not mention any attempts to avail himself of administrative remedies. The response thus makes no showing why the complaint should not be dismissed.

Plaintiff also asks for leave to amend his complaint. "Rule 15(a)(2) of the Federal Rules of Civil Procedure provides that leave to amend should be freely given 'when justice so requires,' and thus 'district courts may withhold leave to amend only for reasons such as . . . "futility of the amendment." ' ' ' *Cohen v. Longshore*, --- F.3d ---, 2010 WL 4069365, at *1 (10th Cir. Oct. 19, 2010) (citations omitted). Here again, because Plaintiff's motion makes no allegation or argument as to exhaustion of administrative remedies, it is clear that amending his complaint would be futile.

The Court will deny leave to amend and will dismiss the complaint without prejudice.

IT IS THEREFORE ORDERED that Plaintiff is DENIED leave to amend his complaint;

IT IS FURTHER ORDERED that Plaintiff's complaint is DISMISSED without prejudice for failure to exhaust available administrative remedies, and judgment will be entered.


UNITED STATES DISTRICT JUDGE